

The complaint

Ms Y complains that Bank of Scotland plc:

- Lent to her irresponsibly when it gave her a mortgage and further advances.
- Has not treated her fairly when the term of her mortgage ended.

What happened

In 1998, Ms Y took out an interest only mortgage with Bank of Scotland. She took further advances in 2001 and 2004.

The mortgage had a flexible drawdown facility, which allowed further borrowing up to a maximum agreed credit limit. In 2011, the mortgage fell into arrears and the drawdown facility was removed. The mortgage term ended in August 2020 – but the mortgage has not been repaid.

Ms Y complains, in summary, that Bank of Scotland:

- Lent to her irresponsibly during time of financial stress. She said the bank knew that she had borrowed the money on her mortgage to complete a significant building project. But Ms Y considers Bank of Scotland did not scrutinise how the funds were used.
- Has not offered her support when the term of her mortgage ended.
- Has not given her accurate information about the mortgage.

I issued a jurisdiction decision. I found we could not look at the irresponsible lending complaint. But we could consider the complaint that Bank of Scotland did not offer Ms Y appropriate support leading up to and when the term of her mortgage ended, and the complaint about the information she was given about the mortgage. We could consider events from 19 January 2018.

I then issued a provisional decision, subject to further submissions, proposing to uphold the complaint in part. My provisional findings, which form part of this decision, were:

I am sorry to hear what Ms Y has been through. I don't doubt the significant impact this matter has had on her finances and her wellbeing and I understand why she thinks Bank of Scotland ought to have done more to help her. I will address her specific concerns in more detail below.

I do not intend to be dismissive of what Ms Y has told us – and it is not my intention to add to what is clearly a very stressful situation for her. But she has asked us to look at her complaint – and I must do so independently and impartially. I am not here to act on behalf of the bank or her.

End of term

The starting point is that Ms Y entered into a contract with Bank of Scotland to repay the mortgage by August 2020. She has not done so and is therefore in breach of contract. I know Ms Y might not see it this way, but the bank has exercised a considerable amount of forbearance already in not taking any formal action to recover the debt. Allowing the mortgage to run past the end of the term is not cost or risk free to the bank.

In saying that, Bank of Scotland is required to treat Ms Y fairly and to take into account her best interests. That does not mean agreeing to everything that Ms Y has proposed. Rather it is a wider consideration of her circumstances and deciding what is best for her overall.

Extending the term of the mortgage on an interest only basis without a clear and viable repayment strategy in the short term is unlikely to be the right thing for Ms Y. She has not made any payments to the mortgage since 2021 and I do not have any evidence that maintaining any payments would be affordable for her. So the balance of the mortgage is going up and eating into any equity in the property.

Further, Ms Y was already in arrears before the term ended. And she has already incurred interest on the full mortgage balance on an interest only basis for 26 years. I do not see how a responsible lender could agree to extend the term on that basis.

Bearing in mind there is no evidence that an interest only mortgage was affordable or sustainable, a repayment mortgage is not going to be a solution. So the only options available to Ms Y are to either sell the property or refinance it.

I have read very carefully about the reasons why Ms Y has been unable to sell the property or refinance. But I'm afraid none of those things are Bank of Scotland's responsibility. It was for Ms Y to manage any building works. I do not agree there was any requirement for the bank to get involved with that work. Nor is Ms Y's tax position a relevant consideration for the bank.

Looking at all of the proposals put forward by Ms Y, in my experience it would be very unusual in my experience for a lender to agree to any of the proposals she has put forward. So I don't consider it unreasonable for Bank of Scotland not to accept those proposals, for example:

- Allow her to stay in the property with an interest rate of 1.15% until the property is sold or she dies, with the interest rolled up – I can see no reason why a lender should agree to offer such an interest rate. Since 2022, interest rates generally have gone up and that is reflected in the amount of interest accruing in the mortgage going up to just under £3,000 a month. Ms Y is not making any payments to the mortgage. That is not sustainable.*

By rolling up the interest, the equity in the property would erode. And there is no clear exit strategy. I don't consider it would have been unreasonable for the bank to reject such a proposal.

- Reinstate the flexible borrowing option – Ms Y can't afford her current commitments and complained that the existing lending was irresponsible. I do not see how additional lending would be in her best interests.*
- Take an equity release mortgage – Ms Y is concerned about the interest rates and the amount she can borrow. Ultimately it is for her to arrange a lifetime mortgage. Bank of Scotland is not responsible for the terms other lenders are prepared to lend on. It is unfortunate that the terms available to Ms Y are not as good as she hoped. But that does not mean that the bank is not entitled to look for the mortgage to be repaid or should offer more forbearance than it has already.*

- *Selling the property once she finds other work – There was no clear timescale for her to find work and sell the property.*
- *Selling the property, but only if she was certain she had a suitable amount remaining after any costs, fees and capital gains tax – That is a matter for Ms Y.*

Bank of Scotland has told us that the type of proposal that is acceptable is one that has a specific date and value – so it knows that the debt can be cleared in full as soon as possible. This would be something such as a lifetime mortgage offer from another lender, an agreed sale of another property or asset, agreed sale of this property or an investment or pension which is maturing soon and has the appropriate value. That is reasonable.

There was no clear and realistic plan to repay the mortgage by a certain date put forward by Ms Y. So I don't consider Bank of Scotland has treated Ms Y unfairly by not agreeing to her proposals – even taking into account what she has told us about her health and wider economic events that were outside her control. Of course, if Ms Y does have concrete plans and is able to support them with evidence then the bank should offer appropriate forbearance to allow the plans to be put in place.

It was reasonable for Bank of Scotland to say that it intends to start legal action as the term ended several years ago and it has not received a viable plan to repay the mortgage in a reasonable timescale.

Communication and vulnerability

From the evidence available to me, when Ms Y writes to Bank of Scotland, if it does reply, it says:

You recently wrote to us. To be able to help you we need you to talk with one of our qualified mortgage advisers...

That might be reasonable in some cases. But Bank of Scotland has told us that in December 2023 it recognised that Ms Y was vulnerable, recorded that on its systems, moved her to a specialist team and took into account her preference for written communication. I consider that was a reasonable step for the bank to take.

However, it is not clear what changed in December 2023. Looking at what Ms Y told the bank it ought to have been aware that she was vulnerable much earlier than that. Ms Y sets out her lack of financial resilience, details of her illnesses and the stress this matter had caused her in letters I have seen from 2018 – and they refer to earlier letters where she explains her health problems.

I am only looking at events from 2018 – and I think Bank of Scotland ought to have been on notice of Ms Y's vulnerability at that point. So it should have taken steps to change the way it communicated with her from 2018. If it had done so it is likely that it would have issued substantive replies to all of Ms Y's letters.

Ms Y considers if Bank of Scotland had meaningfully replied to her proposals between 2019 and 2024 then her situation might have been different. But the bank has told us it would only agree to proposals it fully understands and where there is a specific date that is acceptable to it when the debt would have been repaid. So I am not persuaded that things would have turned out differently had it responded at an earlier stage.

While I agree that the bank did not communicate properly with Ms Y once it was aware of

her vulnerability, I can't see that her vulnerabilities made any real difference to whether the bank should have accepted her proposals. For the reason I have explained the plans she put forward were not in her best interests. While I understand her wish to stay in her home for as long as possible or that allowed her to see through her plans, I can't see that there was a specific reason why her vulnerabilities meant she could not sell her property or refinance or that the bank could not look for the debt to be repaid as agreed.

I will deal with what is a fair amount of compensation below.

Moving forward, I can't see any reason why Ms Y should be given a dedicated point of contact. I think the referral to a specialist department that understands Ms Y's needs is sufficient.

Ms Y accepts that a phone call is necessary and is prepared to have a call, providing there is an agenda. I accept it is reasonable in the circumstances for Bank of Scotland to want to speak to Ms Y so that it can fully explore her circumstances and whether there is any support it can offer. I'm not sure that it would be reasonable for a bank to provide a detailed agenda – it wants to understand Ms Y's proposals and explore what help (if any) it can offer. And I don't think getting into a dispute about how detailed the agenda should be is in any parties' interests.

But I can't see why the bank can't set out in what information Ms Y will need to have to hand during a call and an outline of what will be discussed. So Bank of Scotland should write to Ms Y setting out in as much detail as it can what it will discuss during a phone call regarding Ms Y's options. I'd note that the value of a phone call is that there is a degree of flexibility about what comes up during a discussion. But if during any phone call Ms Y is uncomfortable or needs time to go away and gather information then I can't see why the bank could not accommodate that.

Field agent

In the circumstances, it was reasonable and in line with industry practice for Bank of Scotland to send a field agent to visit her. It is entitled to pass on the costs of that to Ms Y.

Balance and statements

It is not for me to check or audit Ms Y's mortgage and to make sure it has been calculated correctly. Nor is the bank required to provide the detailed breakdown that Ms Y has requested.

We have a list of all transactions on the mortgage and the balance at the start of each year going back to 2018. They show that the starting balance in 2018 was around £500,000 – and it was around £574,000 at the end of February 2023. I can't see any errors in the way that the bank calculated the balance. It reflects that the payments Ms Y made between 2018 and 2021 were usually less than the interest that was applied to the mortgage, she has not made any payments since 2021 and the interest rate on the mortgage has gone up from 2022.

We have not been provided with copies of the annual statements that were sent to Ms Y from 2021. Bank of Scotland should provide them in response to this decision. And I may change my decision in respect of this part of the complaint if the statements do not support what Ms Y has told us.

But if what Ms Y has said is correct – and the statements show monthly interest due of around £470 then it appears that the statements show an incorrect figure for the monthly interest. I say that as the information I have shows that the last time the interest accrued was

around that amount was in January/February 2022. The actual interest increased significantly from that point. And that explains the increase in the balance from 2020.

But if the statements do not show the correct monthly interest accruing – then that is unfair. It would not give Ms Y the information she needs to make informed decisions, My own understanding is that the bank does have an issue in calculating payments due when the term of the mortgage has ended. So I am prepared to accept what she has said – the bank has the opportunity to comment on that and provide evidence in response to this provisional decision.

Bank of Scotland has a duty to provide information that is clear, fair and not misleading. So if what Ms Y has said is correct, I can understand why Ms Y found that confusing. That will have added to her distress. I am not persuaded that if the information had been clearer, that it would have made any difference to Ms Y's overall position – bearing in mind she has not put forward any viable proposals to repay the debt or made any payments to the mortgage since 2021.

It was reasonable, however, for Bank of Scotland to say that Ms Y should request a redemption statement by phone. I am not aware of any reason why Ms Y could not comply with that request. And there was good reason for the bank to manage such requests that way. It means it was more likely to provide an accurate up to date figure.

Putting things right

The failure to properly acknowledge Ms Y's vulnerability, the lack of substantive responses to Ms Y's letters and the unclear information in the annual statements will have caused Ms Y distress and inconvenience. It will have added to – but not been the sole or main source of – the distress, inconvenience and suffering Ms Y has experienced over the past six years. It has clearly caused upset and stress to Ms Y – along with the wasted time and effort she has put into writing the letters.

Bearing in mind what Ms Y has told us about the impact on her and the length of time the communication was not adjusted for her, I consider a payment of £1,000 would be fair to reflect the impact on her.

I will reduce my proposed award to £900 if we receive evidence to show that the amount of interest applied each month is set out in a clear, fair and not misleading way on the annual statements.

Bank of Scotland did not respond. Ms Y did not accept my provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When I issued my provisional decision, I gave both Ms Y and bank of Scotland two weeks to reply. That is our standard timescale for responses to a provisional decision. Ms Y considers the circumstances of her complaint are complex and she needed time to complete things without rushing our process because of the impact on her health. I agreed a number of extensions.

I am satisfied that Ms Y has been given a fair opportunity to set out her complaint. That includes when she complained to the bank, when she referred her complaint to us, in response to the investigator's view and in response to my provisional decision. We have

agreed extensions throughout. I do not agree that the process has been rushed. Indeed, Ms Y has been given considerably more time than we would normally allow. Under our rules it is for me to set deadlines and I consider we have given Ms Y adequate and fair opportunity to make her complaint and respond to us.

I appreciate that Ms Y is not familiar with our processes or procedures. But we are an informal dispute resolution service. Consumers do not need to make detailed, extensive or legal submissions for us to consider their complaint. Nor do they need legal training. Of course, it is up to Ms Y to decide how she responds. She has made a very lengthy response to my provisional decision – over 100 pages, supported with additional evidence of around the same length.

I have read everything that Ms Y has said and provided. But I am not going to comment on each and every point that she has made. That reflects the informal nature of our service and that, ultimately, I do not need to respond in as much detail as she has to address the complaint.

I am independent and impartial. Ms Y has no legitimate grounds to question that. Both sides have been given a fair opportunity to make submissions. I have reviewed all of those submissions and I have made a decision about what I consider to be fair and reasonable in all of the circumstances of the complaint.

I understand why Ms Y thinks her complaint is complex. But we have a great deal of experience in dealing with such complaints. I am satisfied I have reached a fair outcome.

Jurisdiction

The six year limit is not a “guideline” as Ms Y has suggested. It is a limit that I can only extend in certain circumstances. I have already issued a jurisdiction decision. We can’t consider the sale of the mortgage or the further advances or indeed anything that happened before 19 January 2018. While I do not doubt the difficult time Ms Y has been through, the evidence does not support that the failure to comply with the time limits was as a result of exceptional circumstances. Ms Y was in contact with Bank of Scotland throughout the time in question. So there was no reason why she could not complain if she wished. I see no reason to reach a different outcome than I did in my jurisdiction decision.

Even if the further advances were taken out in 2007 and 2008 it would not make any difference to my findings on jurisdiction.

I note Ms Y said she complained to the bank in 2018 and 2019 – and that a complaint made on 18 September 2018 went unanswered. Ms Y has produced a copy of the letter and a certificate of posting showing that she sent two items to Bank of Scotland on that date. It does not necessarily follow that the items were received by the bank. I have not seen any evidence that the letter was received.

Nevertheless, that letter references other complaints and it is not clear what specific points in that letter were not addressed elsewhere. Ms Y has accepted that she received responses to her other complaints. So I don’t consider it makes any difference to what I can consider here.

Communication

I note what Ms Y has said about the impact on her of the poor communication by Bank of Scotland. But I am not persuaded that had it communicated more clearly that Ms Y’s position would have been any different. There is no evidence she could have paid more than she did towards the mortgage. And even after she has received several explanations about what

would be regarded as an acceptable repayment, she has not put one forward.

Field agent

I don't agree that the field agent visits were unreasonable in the circumstances. It is in line with good banking practice for a lender to send a field agent in these circumstances, where there are arrears or a debt is overdue. I don't think the fact that the bank had some information about Ms Y and the property would mean it was unfair for it to send field agents.

Vulnerability

I accept the bank ought to have identified Ms Y's vulnerable circumstances sooner than it did. And that is reflected in the compensation award I have made. But, again, Ms Y has not put forward any persuasive arguments that her position would have been any different had the bank recognised her vulnerable circumstances sooner. And they would not have prevented the bank taking action to recover the debt that is overdue.

Ms Y is still required to repay the debt. And she has not put forward a viable plan to do so. So the action it took was likely to have been the same – albeit with better responses to Ms Y taking account of her vulnerability.

Ms Y said that she has been moved from a "priority team" to the "end of term team". The bank should make sure that she is being dealt with by the most appropriate team that is equipped to understand and respond to vulnerable circumstances.

Property

It is Ms Y's responsibility to manage the property and keep it in good condition. It is for her to address the maintenance and repairs if she wishes. The bank was not required to monitor the renovation of the property. And while that might have had financial impact on Ms Y, it does not override her obligation to repay the mortgage as agreed.

Repayment plans

I understand that everything that Ms Y has said about why she hasn't repaid the mortgage. That included that the terms on which Ms Y can obtain an equity release mortgage have changed, the impact of Ms Y's health, changes to the wider financial environment and her potential tax liability. But none of those things prevent the bank enforcing the agreement she entered into.

While the bank did not respond to Ms Y's proposals as it should have, it was clear that they had not been accepted. The bank has explained that the type of proposal that is acceptable is one that has a specific date and value – so it knows that the debt can be cleared in full as soon as possible. This would be something such as a lifetime mortgage offer from another lender, an agreed sale of another property or asset, agreed sale of this property or an investment or pension which is maturing soon and has the appropriate value. It is for Ms Y to put forward her proposals to repay the mortgage taking that into account, .

I do not doubt that the proposals Ms Y made were in good faith. But the bank has explained they are not acceptable to it and I consider that is fair and reasonable. The bank would have been entitled to take action to repossess the property when the mortgage term ended and it is not clear that Ms Y would have any valid defence to such action. While Ms Y might not see it that way, that is forbearance. Indeed, it has given Ms Y over four years without formally taking legal action.

I was sorry to hear about the problems Ms Y considers she will face if she has to sell her home. But I'm afraid those difficulties would not prevent the bank taking action to enforce the debt. I'm afraid that Ms Y is wrong that the bank is required to provide the level of support she expects regarding what happens once she repays the mortgage. She should seek independent financial advice or speak to a debt advice charity, such as StepChange.

There is no reason for me to say that the bank should allow the mortgage to continue at an interest rate of 1.1% or to reduce the debt by £300,000. There is no basis for me to say fairly or reasonably that the bank should make such an award.

Phone contact

I don't see that the third party authorisation form would prevent Ms Y giving a third party authority to speak to the bank. The bank should take reasonable steps to enable Ms Y to have a third party help her. But the purpose of the form is simply for the bank to have a record that Ms Y is happy for it to speak to a third party. There is no reason or requirement for Ms Y to make "comprehensive representations" about that. And indeed, while I do not doubt Ms Y's sincerity or strength of feeling about things, respectfully, I would add that a lengthy written response is not always going to be helpful for any of the parties. Ms Y has said how difficult she finds it and how it impacts her health. And some of the points she has made are not relevant to what she is asking the bank to consider.

I've already found that it is reasonable for the bank to speak to Ms Y by phone as long it gives Ms Y details about what it will discuss, the information she will need and the format of the call. I think that is a reasonable and pragmatic way forward that balances the legitimate need for the bank to speak to Ms Y and the needs of Ms Y – along with the fact that both sides need to engage with each other. I do not see how a likely protracted and lengthy correspondence would help things.

It is up to Ms Y whether she engages with the bank's phone contact or not. That is her decision. But in my experience there is less likely to be any meaningful progress without it.

There is no basis for me to say that the bank should meet any legal costs Ms Y may choose to incur in respect of anything to do with her mortgage.

Putting things right

Ms Y has said that my proposed award of £1,000 does not reflect the impact of this matter on her. But I am only awarding compensation for the failure of the bank to identify her vulnerability and to communicate in a clear, fair and not misleading way.

Ms Y considers that the compensation should take into account issues from before 2019. But I've explained I can only look at what happened from 18 January 2018. And while I do not doubt how stressful and difficult Ms Y has found things, I do not consider that many of the issues she has raised were as a result of errors by the bank. They reflected that she had an interest only mortgage and did not have the means to repay it. But that was not the bank's fault – and nor were a lot of the other things Ms Y has mentioned as part of this complaint.

After very carefully reviewing what Ms Y has said and provided, I consider that £1,000 is a fair amount of compensation to reflect the impact on her of the bank's failure to identify her vulnerability and to respond to her letters in more detail than it did, along with the failure to set out the correct amount of interest that was being applied to the mortgage each month on the statements. That reflects the substantial distress caused to Ms Y.

I am not persuaded, however, that Ms Y's overall position would have been different had the bank treated her fairly throughout the period in question. I consider it less likely that Ms Y would have taken steps to put in place a viable repayment strategy had that happened. I say that because ultimately, Ms Y knew that the mortgage balance had to be repaid and that the bank had not accepted her proposals. She has not put forward any proposals that met the bank's requirements or taken any practical steps to repay the mortgage. And based on what she has said, I find it difficult to conclude that she would have repaid the mortgage or found a viable plan had the bank communicated differently in the first place.

It was Ms Y's decision to let the rooms in her house in the first place and it was her decision to stop doing so. But I see no reason why Bank of Scotland should compensate her for that.

Summary

When Ms Y took out the mortgage and arranged further borrowing, she entered into a contract with the bank. It was not a one-sided contract. The bank agreed to lend Ms Y money, secured against her home. Ms Y agreed to pay the interest due each month and repay the capital balance at the end of term. Ms Y has not made all of the interest payments due and she did not repay the mortgage as she agreed in 2020. Therefore, she is in breach of contract.

As I explained in my provisional decision, the bank is required to treat Ms Y fairly. But I think it has done so in respect of the forbearance it has offered her. It is entitled to look for the mortgage to be repaid and has explained what it would regard as a viable repayment strategy. Ms Y has not provided a suitable repayment strategy. In my experience it would be very unusual for a mortgage lender to accept any of the proposals that Ms Y has made so far.

In view of that and as over four years have passed since the mortgage was due to be repaid, it would be reasonable for the bank to take further action to recover the debt if there is no realistic repayment proposal put forward by Ms Y. Of course, if Ms Y does come up with a viable plan to repay the mortgage with a specific and acceptable end date, then the bank should consider accommodating that.

I would encourage Ms Y to speak to the bank. She had previously said that she acknowledged the necessity of that. I don't think it is unreasonable for the bank to want to engage with her in that way. And the difficulty here is that Ms Y has told us that she finds both written and phone communication difficult. Of course, the bank should be sensitive to Ms Y's needs and give her more time as reasonably necessary. But I don't consider a phone call is unreasonable in the circumstances here. While Ms Y would prefer exclusively written communication, that is likely to be impracticable at this stage – it would likely unreasonably and unnecessarily draw things out even further. In saying that, the bank should still respond appropriately and substantively to any written communication it receives from Ms Y.

My final decision

My final decision is that Bank of Scotland plc should:

- Pay Ms Y £1,000.
- Write to Ms Y and set out:
 - How to contact it by phone
 - What it will discuss with her
 - What information she needs to have to hand

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 2 January 2025.

Ken Rose
Ombudsman